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Counsel for the Official Committee Of  
Equity Security Holders Of USA Capital First Trust Deed Fund, LLC

**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE COMPANY,  
USA CAPITAL REALTY ADVISORS, LLC,  
USA CAPITAL DIVERSIFIED TRUST DEED FUND,  
LLC,  
USA CAPITAL FIRST TRUST DEED FUND, LLC,  
USA SECURITIES, LLC,

Debtors.

**Affects:**

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☒ USA Capital First Trust Deed Fund, LLC
- ☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR  
Case No. BK-S-06-10726-LBR  
Case No. BK-S-06-10727-LBR  
Case No. BK-S-06-10728-LBR  
Case No. BK-S-06-10729-LBR

CHAPTER 11

Jointly Administered Under Case No. BK-S-06-10725 LBR

**Objection of USACM Trust To Andrew and  
Beth Mitchell Claims Filed in Wrong Debtor's  
Case; Objection of FTDF to Proposed  
Allowance of Claim**

Hearing Date: October 15, 2007

Hearing Time: 9:30 a.m.

1 Andrew and Beth Mitchell (collectively, the “Mitchells”) filed the following Proofs  
2 of Claim against USA Commercial Mortgage Company (“USACM”):

- 3 - Andrew W. Mitchell and Beth Mitchell, JTWROS, 10725-01120 in the  
4 amount of \$59,732.50;  
5 - Andrew W. Mitchell, 10725-01121 in the amount of \$17,915.50; and  
6 - Beth Mitchell, 10725-01144 in the amount of \$17,915.50.

7 Each of the proofs of claim attaches a letter stating that the Mitchells have four  
8 accounts, numbers 11790, 1353, 1205 and 1190. The Mitchells also filed proofs of interest  
9 for amounts identical to those set forth above in the USA Capital First Trust Deed Fund,  
10 LLC (“FTDF”) case (the “Proofs of Interest”). This objection encompasses all of their  
11 accounts.

12 The USACM Liquidating Trust (the “USACM Trust”) hereby objects to the  
13 Mitchells’ claims. The basis for the claims are shown on their face and in the attachments  
14 as investments in FTDF. Accordingly, these are claims that were incorrectly filed in the  
15 USA Commercial Mortgage Company (“USACM”) case. The USACM Trust respectfully  
16 requests that the Mitchells’ claims be disallowed as claims against USACM. Any claims  
17 held by the Mitchells against USACM solely on account of their investment in FTDF are  
18 derivative of FTDF’s claims against USACM. Under a settlement approved by the Court  
19 on June 12, 2007, all such FTDF claims were settled, with FTDF holding a \$7.0 million  
20 allowed general unsecured claim and beneficial interest in the USACM Liquidating Trust.  
21 The equity interest holders in FTDF will share in any recovery on account of that claim.

22 The Official Committee of Equity Security Holders of FTDF (“FTDF Committee”)  
23 further objects to any allowance of the Mitchells’ claims as claims against the FTDF  
24 estate. They do not reflect “claims” as that term is defined in Bankruptcy Code section  
25 101(5).  
26

1 Bankruptcy Code section 502 authorizes a party in interest to object to claims. See  
2 11 U.S.C. § 502(a). Upon such objection, this Court, "after notice and a hearing, shall  
3 determine the amount of such claim in lawful currency of the United States as of the date  
4 of the filing of the petition . . . ." 11 U.S.C. § 502(b). Although a proper proof of claim is  
5 presumed valid under Bankruptcy Rule 3001(f), once an objection controverts the  
6 presumption, the creditor has the ultimate burden of persuasion as to the validity and  
7 amount of the claim. Ashford v. Consolidated Pioneer Mortg. (In re Consolidated Pioneer  
8 Mortg.), 178 B.R. 222, 226 (9th Cir. B.A.P. 1995), aff'd, 91 F.3d 151 (9th Cir. 1996)  
9 (quoting In re Allegheny International, Inc., 954 F.2d 167, 173-74 (3d Cir. 1992)).

10 The FTDF Committee has analyzed the Mitchell claims and has determined that  
11 they have been incorrectly designated as "proofs of claim." Indeed, the Mitchells  
12 appropriately filed the Proof of Interests in the FTDF case. Pursuant to Bankruptcy Code  
13 section 502, a "creditor . . . may file a proof of claim." An equity security interest holder,  
14 however, must file a proof of interest. See 11 U.S.C. § 501(a). Bankruptcy Code  
15 section 101(16) defines "equity security" to include a "share in a corporation, whether or  
16 not transferable or denominated 'stock', or *similar security*" or a "warrant or right . . . to  
17 purchase, sell, or subscribe to a share, security, or interest" of a share in a corporation. 11  
18 U.S.C. § 101(16) (emphasis added). See also Nev. Rev. Stat. §86.521 (upon dissolution of  
19 a limited liability company, a limited liability company must pay liabilities to creditors  
20 before paying liabilities in respect of profits and/or capital to members of the limited  
21 liability company).

22 The Mitchell claims clearly reflect that they are based on their membership in the  
23 FTDF and not based on any debt the claimants hold against the FTDF. For example,  
24 annexed to the Mitchell claims are account statements that list the number of shares the  
25 Mitchells holds in FTDF, the price of such shares, and the FTDF Member's account  
26 identification number. Membership interests and/or shares in the FTDF clearly fall within

1 the definition of "equity security" under Bankruptcy Code section 101(16). Thus, the  
2 holders of the equity interests are equity security interest holders of the FTDF and do not  
3 hold unsecured claims against the FTDF estate. Indeed, the Mitchells appropriately filed  
4 the Proofs of Interest in the FTDF case.

5 This objection does not seek to prejudice the rights of the Mitchells as FTDF  
6 members to recover from the FTDF estate on account of their membership interests of  
7 \$59,733, \$17,916 and \$17,916, respectively, which are the amounts asserted in the  
8 Mitchells' claims as well as the Proofs of Interest. The Mitchells shall retain their interests  
9 in FTDF in the amounts of \$59,733, \$17,916 and \$17,916 as reflected in both the Proofs of  
10 Interest and the books and records of FTDF. Indeed, the Mitchells have received  
11 distributions based on these FTDF membership interests to date, with no objection.

12 Accordingly, the USACM Trust and the FTDF Committee seek entry of an order  
13 that will disallow the Mitchells claims against USACM, disallow any proposed allowance  
14 of the Mitchell claims in the FTDF case, and appropriately allow the Mitchells to retain  
15 their equity interests in the FTDF in the respective amounts of \$59,733, \$17,916 and  
16 \$17,916 as reflected in the Proofs of Interest and the books and records of FTDF as of the  
17 bankruptcy petition filing date.

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1 This objection is made pursuant to Bankruptcy Code section 502, Federal Rule of  
2 Bankruptcy Procedure 3007, and Local Rule of Bankruptcy Practice 3007.

3 Dated: August 8, 2007.

4  
5 By: /s/ Eve H. Karasik  
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LAWYERS

Copy of the foregoing  
Mailed this 8th day of  
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By /s/ Renee L. Creswell